

City of Subiaco

TRADING IN PUBLIC PLACES LOCAL LAW 2014

Trading in Public Places Local Law 2014

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Local Government Act 1995

City of Subiaco

Trading in Public Places Local Law 2014

Under the powers conferred on it by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Subiaco resolved on 25 November 2014 to make the following local law.

Part 1 - Preliminary

1.1 Title

This local law may be cited as the *City of Subiaco Trading in Public Places Local Law 2014*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Purpose

The purpose of this local law is to provide for the regulation, control and management of outdoor dining areas, street markets, trading and street entertainment, in any street or public place within the district.

1.4 Repeal

The *City of Subiaco Trading in Public Places Local Law 2000* as published in the *Government Gazette* on 26 July 2000 and as amended and published in the *Government Gazette* on 10 December 2004 is repealed.

1.5 Application

This local law applies throughout the district.

1.6 Interpretation

In this local law unless the context otherwise requires –

Act means the *Local Government Act 1995*;

applicant means a person who applies for a permit;

application fee means the fee payable upon lodgement of an application for a permit and which relates to the lodgement, assessment and determination of the application but does not include the permit fee;

authorised person means a person appointed by the local government under section 9.10 of the Act;

CEO means the chief executive officer of the local government;

charitable organisation means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium;

Council means the Council of the local government;

district means the district of the local government and includes any area placed under the jurisdiction of the local government pursuant to section 22 of the *Health Act*;

Food Act means the *Food Act 2008*;

food business has the meaning given to it by section 10 of the *Food Act*;

Health Act means the *Health Act 1911*;

hire includes offer to hire and expose for hire;

incorporated association means an association incorporated under the *Associations Incorporation Act 1987*;

Liquor Act means the *Liquor Control Act 1988* and includes any regulations made under that Act;

local government means the City of Subiaco;

local government property means anything except a thoroughfare –

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an otherwise unvested facility under section 3.53 of the Act;

notice means a notice issued in accordance with Part 8;

nuisance means

- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of reasonable physical, mental or social well being of another person;
- (b) anything a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
- (c) anything a person does in or on a public place which unreasonably detracts from or interferes with the enjoyment or value of nearby land owned by another person, provided that anything done in accordance with the law or a legal right or which is consistent with the standard of behaviour in the relevant locality shall not be unreasonable for the purpose of this local law;

outdoor dining area means an outdoor area in which tables, chairs and other structures are provided for the purpose of the supply of food or drink to the public or the consumption of food or drink by the public;

outdoor dining permit means a permit issued under this local law to set up and conduct an outdoor dining area;

permit fee means the fee payable upon the issue of a permit;

permit holder means the person to whom a valid permit has been issued under this local law;

planning approval means an approval for development granted by the local government under a local planning scheme;

private property means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or the subject of a lease or agreement with a company or person enabling its use for private purposes and includes any building or structure thereon;

proprietor includes the owner, the occupier and any person having the management or control of any registered food business;

public place includes -

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law;

registered food business means premises which are registered by the local government under the *Food Act*;

stall means a movable or temporarily fixed structure, stand or table in, on or from which goods, wares, merchandise, produce or services are displayed, sold, hired or offered for sale or hire and includes a vehicle;

street means any highway, thoroughfare or land, otherwise used for vehicular or pedestrian traffic, and includes all the land lying between property lines, including the street verge and footpath;

street entertainment means the conduct in a public place, of any form of theatrical, artistic, musical, audio or visual performance and includes busking;

street entertainment permit means a permit issued under this local law to engage in street entertainment;

street fundraising means the soliciting of pledges or commitments from members of the public to provide future donations for a charitable purpose;

street market means a collection of stalls, stands or displays erected on a street or other public place for the purpose of selling goods, wares, merchandise, or services or carrying out any other transaction;

street market permit means a permit issued under this local law to conduct a street market;

street trading permit means a permit issued under this local law to carry on trading in a street or public place;

trading includes:

- (a) selling, hiring or gifting goods, wares, merchandise or services or the soliciting of orders for goods or services, in a street or other public place;
- (b) displaying goods in any public place for the purpose of:
 - (i) offering them for sale or hire;
 - (ii) inviting offers for sale or hire;
 - (iii) soliciting orders for them; or
 - (iv) carrying out any other transaction in relation to them; and
- (c) going from place to place, whether or not public places, and –
 - (i) offering goods or services for sale or hire;
 - (ii) inviting offers or soliciting orders for the sale or hire of goods or services; or
 - (iii) carrying out any other transaction in relation to goods or services,
- (d) street fundraising; and
- (e) the setting up of a stall and conducting business at a stall.

vehicle includes every conveyance, not being a train, vessel or aircraft and every object capable of being propelled or drawn, on wheels or tracks, by any means.

Part 2 - Permits – general

2.1 Permits

The provisions of this Part apply to all permits issued under this local law unless otherwise specified.

2.2 Planning approval

The requirement for a permit under this local law is additional to the requirement, if any, for a planning approval.

2.3 Application for permit

- (1) A person who is required to obtain a permit under this local law shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall-
 - (a) be in the form determined by the local government;

- (b) be signed by the applicant;
 - (c) provide the information required by the form;
 - (d) provide particulars as to public liability insurance held by the applicant; and
 - (e) be forwarded to the CEO together with any fee imposed and determined by the local government under sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining the application.
 - (4) The local government may require an applicant to give local public notice of the application for a permit.
 - (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the applicant has not complied with subclauses (3) or (4).

2.4 Relevant considerations in determining application for permit

In determining an application for a permit, the local government is to have regard to-

- (a) any relevant policies of the local government;
- (b) the desirability of the proposed activity and its likely impact on the amenity of the locality;
- (c) the location of the proposed activity;
- (d) the suitability of any proposed structure, stall, stand, table or vehicle associated with the proposed activity; and
- (e) any other matters that it considers to be relevant.

2.5 Determination of application

- (1) The local government may, in respect of an application for a permit-
 - (a) approve the application unconditionally or subject to any conditions; or
 - (b) refuse to approve the application.
- (2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.
- (3) A permit may include plans and other supporting documentation as required by this local law.
- (4) If the local government refuses to approve an application for a permit, it is as soon as practicable after the decision is made-

- (a) to give the applicant written notice of, and written reasons for, the refusal; and
 - (b) inform the applicant of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision.
- (5) Without limiting the discretion of the local government under subclause (1), the local government may refuse an application for a permit, where-
- (a) it does not comply with the application requirements under this local law;
 - (b) the proposed activity or place of trading is considered by the local government to be undesirable;
 - (c) the proposed structure, stall, stand, table or vehicle is considered by the local government to be unsuitable in any respect to the activity or location for which the permit is sought;
 - (d) the proposed application does not comply with an applicable policy of the local government; or
 - (e) the proposed permit holder has been convicted during the preceding five years of an offence under the local law, the *Food Act*, the *Health Act*, the *Liquor Control Act* or any other written law which applies to the proposed trading activity.

2.6 Permit conditions

Without limiting the generality of the local government's discretion to impose conditions on a permit pursuant to clause 2.5(1), the local government may approve an application for a permit subject to conditions relating to-

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the grant of another approval, permit, licence or authorisation which may be required under any written law;
- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond as security for such damage; and
- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.

2.7 Compliance with conditions

Where-

- (a) an application for a permit has been approved subject to conditions;
or
- (b) a permit is to be taken to be subject to conditions under this local law,

the permit holder shall comply with each of those conditions.

2.8 Amendment of permit conditions

- (1) A permit holder may apply in writing to the local government to amend any of the terms or conditions of the permit.
- (2) The local government may, in respect of an application under subclause (1)-
 - (a) amend the permit, either in accordance with the application or otherwise as it sees fit; or
 - (b) decline to amend the permit.
- (3) The local government may, at any time and irrespective of whether an application is made under subclause (1), amend any of the terms and conditions of a permit.
- (4) If the local government amends a permit under subclause (3), it is, as soon as practicable after the decision to amend is made-
 - (a) to give to the permit holder written notice of, and written reasons for, its decision to amend; and
 - (b) to inform the permit holder of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision to amend the permit.
- (5) If the local government amends a term or condition of a permit under subclause (3), the amended term or condition of the permit shall apply from the date the permit holder is notified of the amendment in accordance with subclause (4)(a).

2.9 Duration and validity of permit

A permit is valid for six months from the date on which it is issued, unless it is-

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 2.15.

2.10 Permit renewal

Prior to the expiry of a permit, the permit holder may apply for the renewal of a permit, without having to resubmit details required at the time of the initial application, unless otherwise advised in writing by the local government.

2.11 Permit fees

- (1) All permit fees and charges applicable under this local law shall be as determined by the local government in accordance with section 6.16 of the Act.
- (2) In the event of cancellation of a permit, the permit holder shall not be entitled to a refund of permit fees for the remainder of the permit period.

2.12 Suspension of permit

- (1) Subject to clause 2.13, the local government may, by written notice given to the permit holder, suspend a permit if there are reasonable grounds for believing that –
 - (a) the permit holder has contravened a term or condition of a permit;
 - (b) the permit holder has contravened a provision of this local law; or
 - (c) the continued provision of the activity constitutes or will constitute an unacceptable risk to the safety of the public.
- (2) The local government may also suspend a permit by written notice to the permit holder for the purpose and duration of any works, proposed or done in or adjacent to the area the subject of the permit, by or on behalf of a Government department, instrumentality of the Crown or the local government.
- (3) The suspension notice given under subclause (1) must –
 - (a) state the day, or the day and time, on or at which the suspension takes effect;
 - (b) state the reasons for the local government's decision to suspend the permit;
 - (c) where appropriate, indicate what steps need to be taken to ensure that there is compliance with the relevant provision, term or condition or that there is no longer a risk as described in subclause (1)(c); and
 - (d) inform the permit holder of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision to suspend the permit.

2.13 Revocation of suspension

- (1) The local government must, by written notice given to the permit holder, revoke the suspension of a permit if the local government is satisfied that the steps specified in the suspension notice have been taken.
- (2) The local government may, by written notice given to the permit holder, revoke the suspension of the permit if it is appropriate to do so in the circumstances of a particular case.

2.14 Duration of permit suspension

The suspension of a permit has effect on the day or the day and time, specified in the suspension notice until one of the following happens –

- (a) the suspension is revoked under clause 2.13;
- (b) the permit is cancelled under clause 2.15 or expires;
- (c) the permit is surrendered in accordance with the provisions of this local law.

2.15 Cancellation of permit

- (1) The local government may cancel a permit if –
 - (a) the permit holder fails to comply with a condition of the permit;
 - (b) the permit holder is convicted of an offence against this local law; or
 - (c) the permit holder fails to comply with a notice.
- (2) If the local government cancels a permit under subclause (1), it is, as soon as practicable after the decision to cancel the permit is made-
 - (a) to give to the permit holder written notice of, and written reasons for, its decision to cancel the permit; and
 - (b) inform the permit holder of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision to cancel the permit.

2.16 Production of permit

A permit holder shall immediately produce his or her permit when requested to do so by an authorised person.

2.17 Transfer of permit

- (1) A permit is only transferable with the written approval of the local government and upon payment of the applicable transfer fee.
- (2) An application for the transfer of a valid permit is to-
 - (a) be in the form determined by the local government;
 - (b) provide the information required by the form or by any clause of this local law;
 - (c) be signed by the permit holder and the proposed transferee of the permit; and
 - (d) be forwarded to the local government together with any applicable transfer fee.
- (3) The local government may refuse to consider or determine an application for the transfer of a permit, which is not in accordance with subclause (2).
- (4) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to such terms and conditions as it sees fit.

- (5) If the local government approves the transfer of a permit it may specify that the transferee shall become the permit holder -
 - (a) from the date of the approval;
 - (b) from a specified date other than the date of approval; or
 - (c) upon the satisfaction of stipulated conditions.

2.18 Exemption from requirement to pay fee

The local government may waive any fee required to be paid by a permit holder on making an application for or on the issue of a permit, where the permit holder is a charitable organisation or incorporated association.

Part 3 - Outdoor dining

3.1 Permit required

A person shall not set up or conduct an outdoor dining area in a street or public place-

- (a) other than in a portion of a street or public place adjoining a registered food business;
- (b) unless the person is the proprietor of the registered food business referred to in paragraph (a) or acting on the proprietor's behalf;
- (c) unless the outdoor dining area is the subject of a valid and current outdoor dining permit; and
- (d) otherwise than in accordance with the permit and any terms and conditions of the permit.

3.2 Exemptions

- (1) The provisions of Part 3 do not apply to-
 - (a) an outdoor dining area located on private property; or
 - (b) special events such as a street festival, carnival or other occasional activity, which require an approval under another written local law.
- (2) The local government may otherwise exempt a person or class of persons in writing from the requirement to obtain a permit under this Part.
- (3) An exemption under subclause (2) may be exercised-
 - (a) on the application of a person; or
 - (b) at the local government's discretion.
- (4) An exemption under subclause (2) may be given subject to such conditions the local government sees fit.
- (5) A decision by the local government to approve or refuse an application for exemption made pursuant to subclause (2) is not a decision to which the

provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply.

3.3 Permit restrictions

- (1) An outdoor dining permit may only be issued to the proprietor of a registered food business, for use of the land immediately adjacent to the registered food business.
- (2) The issue of a permit does not confer exclusive possession or use of that portion of the street or public place that is the subject of the permit.
- (3) An outdoor dining permit may only be issued in areas where-
 - (a) the positioning of tables and chairs for outdoor dining is not in conflict with existing street furniture approved by the local government; and
 - (b) there is sufficient space in the existing footpath to accommodate tables and chairs and other furniture and fittings required for the outdoor dining area, so as not to impede pedestrian flow.

3.4 Permit application

- (1) An application for an outdoor dining permit shall be made in accordance with clause 2.3 and additionally shall be accompanied by –
 - (a) a plan and specification of the proposed outdoor dining area showing:
 - (i) the location and dimensions of the proposed outdoor dining area and the means by which the outdoor dining area is to be separated from the balance of the street or public place;
 - (ii) the position of all tables, chairs and other structures proposed to be provided in the outdoor dining area and which of such items, if any, are to be retained within the outdoor dining area at all times;
 - (b) a plan and specification showing the outdoor dining area and all land and improvements thereon within thirty metres of the boundaries of the outdoor dining area including any public facility and parking restrictions; and
 - (c) a colour photograph or photographs of the tables, chairs and other structures to be set up in the outdoor dining area.

3.5 Outdoor dining permit

An outdoor dining permit shall-

- (a) be issued in the form determined by the local government;
- (b) include an endorsed copy of the plan or plans detailing the location and dimensions of the outdoor dining area, plus any furniture and equipment required for the operation of the outdoor dining area, as approved by the local government;

- (c) include the days and hours of operation of the outdoor dining area; and
- (d) detail any terms and conditions of the permit, which in addition to the matters set out in clause 2.6, may include:
 - (i) the number, type, form and construction, as the case may be, of any furniture which may be used in the outdoor dining area;
 - (ii) the care, maintenance and cleaning of any furniture used in the outdoor dining area;
 - (iii) the removal and storage of furniture used in the outdoor dining area prior to the closure of the adjacent food business;
 - (iv) the requirement to maintain pedestrian access between the outdoor dining area and the adjacent registered food business;
 - (v) the outdoor dining area not impeding or obstructing a public place used by either pedestrians or vehicles;
 - (vi) the requirement to maintain clear sight lines for vehicles entering or leaving a thoroughfare or a vehicle crossing;
 - (vii) restrictions on the placement of advertising on furniture within the outdoor dining area;
 - (viii) the payment of all fees, charges, rates and taxes levied or incurred as a result of the establishment and operation of the outdoor dining area;
 - (ix) the payment of costs associated with the local government preparing the public place for use as an outdoor dining area, including but not limited to the reshaping of footpaths and marking the boundaries of the outdoor dining area.

3.6 Transfer of registered food business

Without detracting from clause 2.9, a permit shall expire if the proprietor of the registered food business adjoining the outdoor dining area changes, unless a transfer of the permit is first approved by the local government.

3.7 Cancellation of an outdoor dining permit

- (1) Without detracting from clause 2.15 the local government may cancel an outdoor dining permit where –
 - (a) there is a lapse or cancellation of the food business registration issued under the *Food Act*; or
 - (b) the setting up or conduct of, the outdoor dining area, is determined by the local government to pose a threat to the interests of the public, any adjacent property owner or occupier, or cause a nuisance because of the behaviour of customers.

- (2) A decision to cancel a permit in accordance with subclause (1)(b) shall not be made without first having advised the permit holder of the nature of any complaint or concern and having given the permit holder an opportunity to respond to the same.

3.8 Responsibilities of permit holder

A proprietor who is the person named in a permit shall:

- (a) ensure that the outdoor dining area is conducted at all times in accordance with the provisions of this local law;
- (b) ensure that the outdoor dining area is kept in a clean and tidy condition at all times;
- (c) ensure a minimum width of 1.5 metres is kept clear for pedestrian access through the outdoor dining area;
- (d) maintain the chairs, tables and other structures set up in the outdoor dining area in good and serviceable condition at all times;
- (e) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of the street or public place arising from the conduct of the outdoor dining area and the local government may recover such costs from the proprietor in a court of competent jurisdiction as a debt owing to it;
- (f) display the permit in a conspicuous place in the adjoining registered food business; and
- (g) ensure that the operation of the outdoor dining area does not extend beyond the specified portion of the street or public place detailed in the plans approved as part of the permit.

Part 4 - Street markets

4.1 Permit required

A person shall not set up or conduct a street market in a street or public place-

- (a) unless the person is the holder of a valid and current street market permit; and
- (b) otherwise than in accordance with-
 - (i) the terms and conditions of the permit; and
 - (ii) the provisions of this local law.

4.2 Permit restrictions

The issue of a street market permit does not confer exclusive possession or use of that portion of the street or reserve, the subject of the permit.

4.3 Permit application

- (1) An application for a street market permit shall be made in accordance with clause 2.3 and shall additionally be accompanied by –
 - (a) a copy of the planning approval issued by the local government;
 - (b) a plan or plans to a scale of 1:100 showing-
 - (i) the location and dimensions of the proposed area to be used for the street market;
 - (ii) the dimensions of the thoroughfare including the footpath and the location and nature of any street furniture, trees, utilities, parking or service bays in the area;
 - (iii) the position and dimensions of all proposed market stalls;
 - (c) a management plan outlining the operation of the street market including-
 - (i) the proposed days and times of operation;
 - (ii) the proposed type and form of any advertising devices to be used;
 - (iii) details of how the operational responsibilities of the permit holder will be met;
 - (d) the nature and extent of any activity relating to street entertainment.

4.4 Street market permit

A street market permit shall-

- (a) be issued in the form determined by the local government;
- (b) include an endorsed copy of the plan or plans detailing the location where any furniture displays and other equipment may be placed for the operation of the street market;
- (c) include the days and hours of operation of the street market; and
- (d) detail any terms and conditions of the permit.

4.5 Responsibilities of permit holder

- (1) The permit holder shall, prior to commencing operation of the street market, obtain relevant approvals and make arrangements as follows-
 - (a) obtain approval from the local government and Western Australia Police Service for the closure of public streets to vehicular traffic, in the location and during the hours of operation of the street market, where required;

- (b) lodge a copy of the approved plans of the street market with the Department of Fire and Emergency Services or other appropriate fire management authority;
 - (c) ensure adequate refuse collection arrangements have been made to the satisfaction of the local government;
 - (d) where required, obtain approvals under the *Health (Public Building) Regulations 1992*, including but not limited to a certificate of approval and a certificate of electrical compliance;
 - (e) obtain approval from the local government in relation to public entertainment aspects of the street market.
- (2) The permit holder shall, during the operation of the street market, including setting up and dismantling times-
- (a) maintain pedestrian access through and beyond the street market area;
 - (b) maintain access to adjacent building entries;
 - (c) maintain access to existing or approved outdoor dining areas associated with adjacent building entries;
 - (d) maintain adequate access for emergency vehicles through or to the permit area;
 - (e) stabilise all structures and furniture provided and used in the operation of the markets at all times and remove such structures and furniture when not in use;
 - (f) manage noise levels from any associated music, announcements, and the like, in accordance with any permit condition, so as not to cause a nuisance;
 - (g) maintain the permit area clean and free from rubbish;
 - (h) ensure the street market does not extend beyond the specified portion of street or public place detailed in the plans approved and endorsed as part of the permit; and
 - (i) provide separate sanitary facilities for food stall staff.
- (3) The permit holder shall at the conclusion of each street market, ensure that all structures and equipment used in the operation of the street market, are removed and the area returned to the condition it was before the commencement of the street market, to the satisfaction of the local government.

Part 5 - Street trading

5.1 Permit required

- (1) Subject to subclause (2), a person shall not carry on trading in any street or public place-

- (a) unless the person is the holder of a valid and current street trading permit or is an assistant specified in the permit; and
- (b) otherwise than in accordance with-
 - (i) the terms and conditions of the permit; and
 - (ii) the provisions of this local law.
- (2) Subclause (1) does not apply to trading in a street market that is the subject of a valid and current street market permit issued by the local government.

5.2 Permit restrictions

The issue of a street trading permit does not confer exclusive possession or use of that portion of the street or public place the subject of the permit.

5.3 Permit application

- (1) An application for a street trading permit shall be made in accordance with clause 2.3 and shall additionally be accompanied by –
 - (a) details of the number of assistants to be employed in the street trading activity ;
 - (b) plans of the proposed location;
 - (c) days and hours of operation;
 - (d) proposed goods, wares, merchandise or services for which trading will be carried on;
 - (e) detailed, accurate plan and description of any proposed stall, stand, table, structure or vehicle to be used for trading; and
 - (f) name and address of the person responsible for complying with any conditions imposed by the permit, where the applicant is a corporation.

5.4 Street trading permit

In addition to the requirements stipulated in Part 2, a street trading permit shall-

- (a) include the location, days and hours of operation and for mobile traders may include a predetermined approved route or area;
- (b) detail the goods, wares, merchandise or services for which trading is approved under the permit; and
- (c) limit the number of persons who may carry on trading at any one time.

5.5 Responsibilities of permit holder

- (1) The permit holder shall –

- (a) not carry on any trading activity beyond the specified portion of the public place detailed in the plans approved as part of the permit;
 - (b) ensure that the permit area is attended either by the permit holder or an assistant, at all times when trading is being undertaken;
 - (c) keep any stall, stand, table, structure or vehicle specified in the permit in a clean, safe condition and in good repair;
 - (d) ensure a minimum width of 1.5 metres is kept clear for pedestrian access;
 - (e) keep the location specified in the permit free from refuse and rubbish;
 - (f) remove any stall, merchandise and signs from the location specified in the permit and leave the location clean and vacant –
 - (i) at the conclusion of the permitted hours of operation specified in the permit; and
 - (ii) whenever the trading is not taking place on the location to which the permit applies.
- (2) The permit holder shall not-
- (a) engage in or permit any trading in any goods, wares, merchandise or services other than those specified in the permit;
 - (b) cause, permit or suffer any nuisance to exist, arise or continue on or from the location to which the permit applies;
 - (c) cause, permit or store any goods, wares, merchandise on any street or public place, other than on the location to which the permit applies;
 - (d) obstruct the free passage of pedestrians on any footpath or pedestrian accessway;
 - (e) use or display or permit to be used or displayed any advertisement, placard, poster, streamer, sign or signboard on or about the location specified in the permit other than price tickets or labels on the permitted place not exceeding a total of 0.25 square metres within the permit area;
 - (f) erect and maintain signs, other than in accordance with subclause (e), so as to obscure any other signage on or adjacent to the permit area;
 - (g) cry out, shout about or permit any other person to cry out or shout about any goods, wares, merchandise or services in any street or public place;
 - (h) use or permit to be used any loud hailer, microphone, amplifier or other apparatus for making or transmitting sound, on or from the place specified in the permit, unless approved by the local government;

- (i) use or permit to be used any record, tape, radio, bell, musical instrument or other instrument or device capable of being heard beyond the boundaries of the place specified in the permit, unless approved by the local government;
- (j) use or permit to be used any flashing or intermittent lighting apparatus or device on or from the place specified in the permit, unless approved by the local government; or
- (k) use or permit to be used apparatus or device including flap or shelf whereby the dimension of the stall area increases beyond that specified in the permit.

Part 6 - Street entertainment

6.1 Permit required

A person shall not in any public place, engage in any form of street entertainment-

- (a) unless the person is the holder of a valid and current street entertainment permit; and
- (b) otherwise than in accordance with-
 - (i) the terms and conditions of the permit; and
 - (ii) the provisions of this local law.

6.2 Permit restrictions

The issue of a street entertainment permit does not confer exclusive possession or use of that portion of the street or public place the subject of the permit.

6.3 Permit application

An application for a street entertainment permit shall be made in accordance with clause 2.3 and additionally shall specify –

- (a) the nature of the proposed street entertainment;
- (b) any musical instrument or amplifier proposed to be used;
- (c) the number of people involved in the proposed street entertainment; and
- (d) the name and date of birth of anyone proposed to be involved in the performance who is under 14 years of age.

6.4 Street entertainment permit

A street entertainment permit shall-

- (a) be issued on the form used for the purpose;
- (b) include details of the location and equipment that can be used for the street entertainment, as approved by the local government;

- (c) include the days and permitted times for the street entertainment; and
- (d) detail any other terms and conditions imposed with the permit.

6.5 Responsibilities of permit holder

- (1) The permit holder shall ensure that the street entertainment –
 - (a) does not extend beyond the specified portion of the street or public place approved in the permit;
 - (b) does not prevent or impede pedestrian flow or access to and along footpaths, entry or exit to shops and other buildings;
 - (c) does not prevent or impede vehicular flow or access to and along any street, entry or exit to any service delivery area;
 - (d) does not cause a nuisance to any other street entertainment or activity approved by the local government;
 - (e) does not have more than 4 people participating in any one performance;
 - (f) unless otherwise approved, does not include any person under the age of 14 years-
 - (i) during school hours, on school days; or
 - (ii) between 7.00pm and 6.00am;
 - (g) does not include, involve or permit-
 - (i) anything that is offensive or obscene;
 - (ii) the use of fire;
 - (iii) any weapon or object with sharp edges, including knives and swords;
 - (iv) any motorised machinery that emits a loud noise in its operation or is not suitable in the location (e.g. chainsaw);
 - (v) any other activity, object or matter whatsoever that endangers the safety of the public or the performer; or
 - (vi) cruelty to an animal.
 - (h) does not include any amplification unless specifically approved and endorsed on the permit and in any event will not be permitted on Monday to Saturday, before 7.00am or after 10.00pm and on Sunday before 9.00am or after 10.00pm; and
 - (i) complies at all times with the *Environmental Protection (Noise) Regulations 1997*.
- (2) The permit holder shall –

- (a) use the allocated space and location to perform during the days and times specified in the permit or vacate the location;
 - (b) ensure a valid permit number is visibly displayed during each performance; and
 - (c) comply at all times with a direction of an authorised person.
- (3) A permit holder shall not –
- (a) reserve or attempt to reserve a location or leave equipment at a location used for performances unless immediately before, during and immediately after a performance.
 - (b) sell any goods or services without written approval or permit issued for that purpose;
 - (c) erect or display or permit to be erected or displayed at or near the performance location any sign except –
 - (i) a sign no larger than 0.25 square metres, displaying the name of the performance; or
 - (ii) standard business cards.
- (4) A permit holder who is performing pavement or visual art –
- (a) shall use chalk unless working on paper or card;
 - (b) shall not use spray paint, crayons, permanent markers or other indelible materials; and
 - (c) shall return the location, including the pavement surface, to its former condition.

6.6 Cancellation and variation of street entertainment permit

Without detracting from clauses 2.8 or 2.15, the local government may cancel or vary the terms and conditions of a street entertainment permit, in the event that-

- (a) the performance is considered by an authorised person to adversely affect the enjoyment, convenience or comfort of other persons in a public place;
- (b) the performance constitutes a nuisance; or
- (c) the permit holder fails to meet any of the responsibilities detailed in clause 6.5.

Part 7 - Secured sum

7.1 Security for restoration and reinstatement

- (1) For the purpose of ensuring that an outdoor dining or street market area is properly restored or reinstated, on the expiry of a permit, the local government may require that the permit holder-

- (a) as a condition of a permit;
- (b) before the issue of the permit; or
- (c) before the renewal of a permit,

give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government.

- (2) A bond required under subclause (1) is to be paid into an account established by the local government for the purpose of this clause.

7.2 Use by the local government of secured sum

- (1) If a permit holder fails to carry out or complete the reinstatement works required by the permit conditions or by a notice served by the local government, either-
 - (a) within the time specified in the conditions or notice; or
 - (b) where no such time has been specified, a reasonable period of time from the expiration of the permit of the outdoor dining facility specified in the permit conditions; then-

the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone.

- (2) The permit holder shall be liable to pay to the local government on demand all administrative, legal, contractor and other costs, estimated or incurred by the local government, to restore and reinstate the site or which the local government may be required to pay in respect of works undertaken pursuant to subclause (1).
- (3) The local government may obtain payment of the costs required by subclause (2) by applying the proceeds of any bond, bank guarantee or other security provided by the permit holder under clause 7.1 to meet such costs.
- (4) The liability of a permit holder to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 7.1.
- (5) If the costs incurred by the local government under subclause (2) exceed the bond, bank guarantee or other security provided by the permit holder, the permit holder shall be liable to pay any outstanding costs not covered by the bond, bank guarantee or other security.

Part 8 - Miscellaneous

8.1 Notice requiring works to be done to remedy breach

- (1) Where the local government requires works to be done-
 - (a) to rectify a breach of any provision of a permit or the local law; or
 - (b) to rectify damage to a public place as a result of the use of that public place as an outdoor dining area; or

- (c) to change the arrangement or operation of an outdoor dining area considered necessary to maintain public safety, facilitate public works to the footpath or street, or protect the amenity of an adjacent premises;

the local government may give notice in writing to the permit holder-

- (d) advising details of the breach of the local law or works required;
 - (e) requiring the permit holder to remedy the breach or do the works required within the time specified in the notice; and
 - (f) advising that where the permit holder fails to comply with the requirements of the notice within the time specified, the local government may do the required work at the cost of the permit holder.
- (2) A person who fails to comply with a notice issued under subclause (1) commits an offence.
 - (3) Where the permit holder fails to comply with the requirements of the notice, the local government may by its employees, agents or contractors carry out all works and do all things necessary to comply with the requirements of the notice.
 - (4) The local government may recover the expenses incurred in carrying out the works in accordance with subclause (3)-
 - (a) as a charge against the secured sum lodged for the purpose in accordance with clause 7.1; or
 - (b) from the permit holder in court of competent jurisdiction.

8.2 Notice to advise permit holder of planned or emergency works

- (1) The local government shall give 14 days notice to an affected permit holder of any planned works to be undertaken by the local government, that will require closure, part closure or access to an outdoor dining area or street market location.
- (2) Where the local government is to carry out emergency works in an outdoor dining area or street market location, there shall be no specified time for the giving of notice of the works to the licensee, other than that which is considered reasonable under the circumstances.
- (3) Where notice is given under subclause (1) or (2) all rights and privileges of the permit holder shall be suspended in accordance with the terms of the notice and clause 2.12.

8.3 Serving of notice

Notices served under this local law are to be delivered to the permit holder or sent by mail addressed to the permit holder.

Part 9 - Enforcement

9.1 Offences

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) An offence against a clause specified in Schedule 1 of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

9.2 Infringement and infringement withdrawal notices

For the purposes of this local law-

- (a) the form of the infringement notice referred to in section 9.17 of the Act is Form 2 in the First Schedule of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in the First Schedule of the *Local Government (Functions and General) Regulations 1996*.

9.3 Offence description and modified penalty

The amount appearing in the final column of the First Schedule directly opposite an offence described in that Schedule is the modified penalty for that offence.

9.4 Prosecution for offences

A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in the Magistrate's Court of Western Australia.

9.5 Records to be kept

The local government shall cause adequate records to be kept of all infringement notices served and modified penalties received.

9.6 Right of appeal

When the local government makes a decision as to whether it will-

- (a) grant a person a permit under this local law; or
- (b) renew, vary, suspend or cancel a permit that a person has under this local law,

the provisions of Division 1 of Part 9 of the Act apply to that decision.

9.7 Appointment of authorised persons

Unless otherwise expressly stated by the local government, a person appointed by the local government to be an authorised person for the purposes of this local law is taken to have also been appointed by the local government to be an authorised person for the purposes of sections 9.13 and 9.16 of the Act in relation to offences against this local law.

9.8 Direction of authorised person to be obeyed

- (1) A permit holder who is given a lawful direction by an authorised person or a police officer shall comply with that direction.
- (2) A permit holder shall not obstruct or hinder an authorised person in the performance of that person's duties.

9.9 Removal and impounding of goods

Where an outdoor dining area is conducted without a permit or in contravention of a condition of a permit, any furniture may be removed and impounded by an authorised person in accordance with regulation 29 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1 - Offences and modified penalties

[Clauses 9.1, 9.3]

Item No.	Clause No.	Nature of offence	Modified Penalty \$
Part 3 – Outdoor Dining			
1	3.1(c)	Set up or conduct outdoor dining area without permit	500
2	3.1(d)	Set up or conduct outdoor dining area contrary to permit plan or conditions	500
3	3.8(b)	Fail to keep outdoor dining area in a clean and tidy condition	250
4	3.8(c)	Fail to ensure a minimum 1.5 metre width clear for pedestrians in outdoor dining area	250
5	3.8(d)	Fail to maintain chairs, tables, and other structures in outdoor dining area in a good and serviceable condition	250
6	3.8(f)	Fail to display permit in a conspicuous place in adjoining registered food business	250
7	3.8(g)	Permit operation of outdoor dining area to extend beyond area approved as part of the permit	250
Part 4 – Street Markets			
8	4.1(a)	Set up or conduct street market without permit	500
9	4.1(b)(i)	Set up or conduct street market contrary to licence conditions	500
10	4.5(1)(b)	Fail to lodge copy of approved plans of street market with the Department of Fire and Emergency Services.	250
11	4.5(1)(c)	Fail to make adequate refuse collection arrangements to satisfaction of local government	250
12	4.5(2)(a)	Fail to maintain pedestrian access through and beyond street market area	250
13	4.5(2)(b)	Fail to maintain access to adjacent building entries	250
14	4.5(2)(c)	Fail to retain access to existing or approved outdoor dining areas with adjacent building entries	250
15	4.5(2)(d)	Fail to maintain adequate access for emergency vehicles through permit area	250
16	4.5(2)(e)	Fail to stabilise all structures and furniture used in operation of street market and remove when not in use	500
17	4.5(2)(g)	Fail to maintain permit area clean and free from rubbish	250
18	4.5(2)(h)	Permit operation of street market area to extend beyond area approved as part of the permit	250
19	4.5(3)	Fail to remove all structures and equipment at conclusion of street market	250
Part 5 – Street trading			
20	5.1(1)(a)	Trading in a street or public place without a permit	500

Item No.	Clause No.	Nature of offence	Modified Penalty \$
21	5.1(1)(b)(i)	Trading in a street or public place contrary to permit conditions	500
22	5.5(1)(a)	Permit trading to extend beyond approved permit area	250
23	5.5(1)(b)	Fail to ensure permit area attended by permit holder or assistant	250
24	5.5(1)(c)	Fail to keep any stall, stand, table or structure, or vehicles in clean, safe condition and good repair	250
25	5.5(1)(d)	Fail to ensure a minimum width of 1.5 metres kept clear for pedestrian access	250
26	5.5(1)(e)	Fail to keep location specified in permit free from refuse and rubbish	250
27	5.5(1)(f)(i)	Fail to remove any stall, merchandise and signs and leave location clean at conclusion of operation hours	250
28	5.5(1)(f)(ii)	Fail to remove any stall, merchandise and signs and leave location vacant whenever trading is not taking place	250
29	5.5(2)(a)	Trading in goods, wares, merchandise or services not specified in permit	250
30	5.5(2)(b)	Cause or permit nuisance to exist, arise or continue from the permit location	250
31	5.5(2)(c)	Deposit, place or store any goods, wares or merchandise on any street or public place other than the permit location	250
32	5.5(2)(d)	Obstruct free passage of pedestrians on footpath or accessway	250
33	5.5(2)(f)	Erect and maintain signs so as to obscure other signage on or adjacent the permit area.	250
34	5.5(2)(g)	Cry out or shout about goods, merchandise or services in street or public place	250
35	5.5(2)(h)	Use or permit use of loud hailer, microphone amplifier or sound apparatus, outside permit location without approval	250
36	5.5(2)(i)	Use or permit use of any record, tape, radio or musical instrument to be heard outside permit location without approval	250
37	5.5(2)(j)	Use of permit use of any flashing or intermittent lighting apparatus or device on or from permit area without approval	250
Part 6 – Street Entertainment			
38	6.1(a)	Engage in street entertainment without a permit	500
39	6.1(b)(i)	Engage in street entertainment contrary to permit terms or conditions	500
40	6.5(1)(a)	Allow street entertainment to extend beyond permit area	250
41	6.5(1)(b)	Permit street entertainment to impede pedestrian flow or access to and along footpaths, entry or exit to shops or other buildings	250

Item No.	Clause No.	Nature of offence	Modified Penalty \$
42	6.5(1)(c)	Permit street entertainment to impede vehicular flow or access to and along any street, entry or exit to service delivery area.	250
43	6.5(1)(d)	Permit street entertainment to cause a nuisance to any other street entertainment or activity approved by the local government	250
44	6.5(1)(f)(i)	Permit street entertainment to include persons under 14 years of age, during school hours on a school day, without approval	250
45	6.5(1)(f)(ii)	Permit street entertainment to include person under 14 years of age, on school days between 7.00pm and 6.00am, without approval	250
46	6.5(1)(g)(i)	Permit street entertainment to involve anything that is offensive or obscene	250
47	6.5(1)(g)(ii)	Permit street entertainment to involve the use of fire	250
48	6.5(1)(g)(iii)	Permit street entertainment to involve any weapon or object with sharp edges, including knives or swords	250
49	6.5(1)(g)(iv)	Permit street entertainment to involve motorised machinery	250
50	6.5(1)(g)(v)	Permit street entertainment to endanger safety of the public or performer	500
51	6.5(1)(g)(vi)	Permit street entertainment to involve cruelty to animals	500
52	6.5(1)(h)	Permit street entertainment to involve amplification without approval	500
53	6.5(2)(b)	Failure to display valid permit number	250
54	6.5(2)(c)	Fail to comply with the direction of an authorised person	250
55	6.5(3)(a)	Reserve or leave equipment at performance location unless immediately before, during or after performance	250
56	6.5(3)(b)	Sale of goods or services without approval or permit	500
57	6.5(4)(a)	Use of materials other than chalk by a pavement or visual artist, unless working on card or paper	500
58	6.5(4)(c)	Failure of a pavement or visual artist, to return the location including pavement, to its former condition	250
Part 8 – Miscellaneous			
59	8.1(2)	Failure to comply with notice	250
60	9.1(1)	Failure to do anything required or directed to be done or do any prohibited thing	250

Dated 5th day of December 2014

The Common Seal of the
City of Subiaco
was affixed in the
presence of: }



A handwritten signature in blue ink, appearing to be "S. Tindale", written over a horizontal line.

STEPHEN TINDALE
CHIEF EXECUTIVE OFFICER

A handwritten signature in blue ink, appearing to be "H. Henderson", written over a horizontal line.

HEATHER HENDERSON
MAYOR